

(4) *Unrated carrier* means that a safety rating has not been assigned to the motor carrier by the FHWA.

[53 FR 50968, Dec. 19, 1988, as amended at 56 FR 40805, Aug. 16, 1991; 62 FR 60042, Nov. 6, 1997]

#### § 385.5 Safety fitness standard.

The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers. To meet the safety fitness standard, the motor carrier shall demonstrate that it has adequate safety management controls in place, which function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

- (a) Commercial driver's license standard violations (part 383),
- (b) Inadequate levels of financial responsibility (part 387),
- (c) The use of unqualified drivers (part 391),
- (d) Improper use and driving of motor vehicles (part 392),
- (e) Unsafe vehicles operating on the highways (part 393),
- (f) Failure to maintain accident registers and copies of accident reports (part 390),
- (g) The use of fatigued drivers (part 395),
- (h) Inadequate inspection, repair, and maintenance of vehicles (part 396),
- (i) Transportation of hazardous materials, driving and parking rule violations (part 397),
- (j) Violation of hazardous materials regulations (parts 170 through 177), and
- (k) Motor vehicle accidents and hazardous materials incidents.

[53 FR 50968, Dec. 19, 1988, as amended at 58 FR 33776, June 21, 1993]

#### § 385.7 Factors to be considered in determining a safety rating.

The factors to be considered in determining the safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and any other data. The factors may include all or some of the following:

- (a) Adequacy of safety management controls. The adequacy of controls may be questioned if their degree of formalization, automation, etc., is found

to be substantially below the norm for similar carriers. Violations, accidents or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or not functioning properly.

- (b) Frequency and severity of regulatory violations.

- (c) Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections.

- (d) Number and frequency of out-of-service driver/vehicle violations.

- (e) Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews.

- (f) Frequency of accidents; hazardous materials incidents; accident rate per million miles; preventable accident rate per million miles; and other accident indicators; and whether these accident and incident indicators have improved or deteriorated over time.

- (g) The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with Federal rules, regulations, standards, and orders.

[53 FR 50968, Dec. 19, 1988, as amended at 58 FR 33776, June 21, 1993]

#### § 385.9 Determination of a safety rating.

- (a) Following a compliance review of a motor carrier operation, the FHWA, using the factors prescribed in § 385.7 as computed under the Safety Fitness Rating Methodology set forth in appendix B of this part, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standard set forth in § 385.5, and assign a safety rating accordingly.

- (b) Unless otherwise specifically provided in this part, a safety rating will be issued to a motor carrier within 30 days following the completion of a compliance review.

[62 FR 60042, Nov. 6, 1997]

#### § 385.11 Notification of a safety rating.

- (a) Except as provided elsewhere in this section, written notification of the

safety rating will be provided to a motor carrier as soon as practicable after assignment of the rating, but not later than 30 days after the review that produced the rating.

(b) Before a safety rating of *unsatisfactory* or *conditional*, is assigned to any motor carrier, the FHWA will issue a notice of proposed safety rating. The notice of proposed safety rating will list the deficiencies discovered during the review of the motor carrier's operations, for which corrective actions must be taken. A proposed *conditional* safety rating (which is an improvement of an existing *unsatisfactory* safety rating) becomes effective as soon as it issued from Washington, D.C., and the carrier may also avail itself of relief under the §385.15, Administrative Review and §385.17, Change to safety rating based on corrective actions.

(c) A notice of a proposed safety rating of *unsatisfactory* will indicate that, if the *unsatisfactory* rating becomes final, the motor carrier will be subject to the provisions of §385.13, which prohibit motor carriers rated *unsatisfactory* from transporting hazardous materials or passengers, and other consequences that may result from such rating.

(d) Except as provided in §385.17, a proposed safety rating issued pursuant to paragraph (b) of this section will become the motor carrier's final safety rating 45 days after the date the notice of proposed safety rating is received by the motor carrier.

[62 FR 60042, Nov. 6, 1997]

**§385.13 Unsatisfactory rated motor carriers—prohibition on transportation of hazardous materials and passengers; ineligibility for Federal contracts.**

(a) A motor carrier rated *unsatisfactory* is prohibited from operating a commercial motor vehicle to transport—

(1) Hazardous materials for which vehicle placarding is required pursuant to part 172 of chapter 1 of this title; or

(2) More than 15 passengers, including the driver.

(b) A motor carrier subject to the provisions of paragraph (a) of this section is ineligible to contract or subcontract with any Federal agency for

transportation of the property or passengers referred to in paragraphs (a)(1) and (a)(2) of this section.

(c) *Penalties.* When a carrier subject to the prohibitions in paragraph (a) of this section is known to transport the property or passengers referred to therein, an order will be issued placing those operations out of service. Any motor carrier that operates commercial motor vehicles in violation of this section will be subject to the penalty provisions listed in part 386 of this chapter.

[62 FR 60042, Nov. 6, 1997]

**§385.15 Administrative review.**

(a) Within the 45 day notice period provided in §385.11(d), or within 45 days after denial of a request for a change in rating as provided in §385.17(g), the motor carrier may petition the FHWA for administrative review of a proposed or final safety rating by submitting a written request to the Director, Office of Motor Carrier Field Operations, 400 Seventh Street, SW., Washington DC 20590.

(b) The petition must state why the proposed safety rating is believed to be in error and list all factual and procedural issues in dispute. The petition may be accompanied by any information or documents the motor carrier is relying upon as the basis for its petition.

(c) The Director, Office of Motor Carrier Field Operations, may request the petitioner to submit additional data and attend a conference to discuss the safety rating. Failure to provide the information requested or attend the conference may result in dismissal of the petition.

(d) The petitioner shall be notified in writing of the decision on administrative review. The notification will occur within 30 days after receipt of a petition from a hazardous materials or passenger motor carrier.

(e) If the decision on administrative review results in a final rating of *unsatisfactory* for a hazardous materials or passenger motor carrier, the decision shall be accompanied by an appropriate out-of-service order.

(f) All other decisions on administrative review of ratings constitute final